

Petitions, Preliminary Inquiries, and Preliminary Hearings

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7.1 Petitions to Commence Proceedings in Family Division

A petition* is a complaint or other written accusation, verified in the manner provided in MCR 2.114, that a juvenile has committed an offense. MCR 5.903(A)(14). A petition may be verified by an oath or affirmation of the person having knowledge of the facts stated, or by a signed and dated declaration. MCR 2.114(B)(2). See *In re Hatcher*, 443 Mich 426, 433–36 (1993) (purpose of petition is to allow court to determine if statutory basis for jurisdiction exists).

Any request for Family Division action against a juvenile must be in writing by means of a petition. MCR 5.931(A). MCR 5.931(C) qualifies this by providing that a citation or appearance ticket that conforms to the requirements for valid issuance to an adult may serve as a petition for an offense other than a major offense (a felony). MCR 5.903(B)(3). A citation or appearance ticket, however, shall not serve as a basis for pretrial detention.

*See Form JC 04.

Under MCL 712A.11(2); MSA 27.3178(598.11)(2), and MCR 5.914(B)(1), only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile for having committed a criminal offense.

A “petition authorized to be filed” refers to written permission given by a judge or referee to file a petition containing allegations against the juvenile with the clerk of the court. MCR 5.903(A)(15). An authorized petition is deemed filed when it is delivered to, and accepted by, the clerk of the court. MCR 5.903(A)(5).

*See Section 2.3
for a definition
of status offenses.

7.2 Petitions in Status Offense Cases*

Unlike other delinquency cases, the petitioner in status offense cases does not have to be the prosecuting attorney. MCR 5.914(B)(1) and MCL 712A.11(3); MSA 27.3178(598.11)(3), state that the prosecutor’s signature is required on every petition that requests the court to take jurisdiction in a delinquency case. No similar requirement exists when the petition requests that the court take jurisdiction in a status offense case. Therefore, a complaint signed by a police officer, a parent, or an employee of the Family Independence Agency may serve as the charging document in status offense cases. In addition, MCR 5.931(C) states that a citation or appearance ticket may serve as a petition for an offense other than a major offense (felony).

7.3 Contents of Petitions

A petition must be verified, must set forth plainly the facts that bring the juvenile within the Juvenile Code, and may be upon information and belief. MCL 712A.11(3); MSA 27.3178(598.11)(3). The petition must contain the following information, if known, or if not known to the petitioner, be stated as unknown:

- (1) the juvenile’s name, address, and date of birth;
- (2) the names and addresses of:
 - (a) the juvenile’s parents;
 - (b) the juvenile’s legal guardian, if there is one;
 - (c) each person who has custody or control of the juvenile;
 - (d) the nearest known relative of the juvenile, if no parent can be found; and
 - (e) any court with prior continuing jurisdiction;
- (3) the essential facts which constitute an offense by the juvenile;
- (4) a citation to the section of the Juvenile Code relied upon for jurisdiction;

(5) a citation to the law or ordinance allegedly violated by the juvenile;

(6) the court action requested;

(7) if applicable, the notice required by MCL 257.732(7); MSA 9.2432(7), and the juvenile's driver's license number;* and

(8) information required by MCR 3.206(A)(4), identifying whether a Family Division matter involving members of the same family is or was pending.*

*See Section 7.4, below.

*See Section 7.5, below.

MCL 5.931(B)(1)–(8).

A petition may be amended at any stage of the proceedings as the ends of justice require. MCL 712A.11(6); MSA 27.3178(598.11)(6).

7.4 Required Notice When Juvenile Is Charged With a Felony in Which a Motor Vehicle Was Used

MCL 257.732(7); MSA 9.2432(7), states that when a juvenile is accused of an act, the nature of which constitutes a felony in which a motor vehicle was used, he or she must be informed that if adjudicated, the juvenile's driver's license will be suspended by the Secretary of State. "Felony in which a motor vehicle was used" is defined as a felony during which the juvenile operated a motor vehicle, and while operating the vehicle presented real or potential harm to persons or property, and one or more of the following circumstances existed:

- (a) the vehicle was used as an instrument of the felony;
- (b) the vehicle was used to transport a victim of the felony;
- (c) the vehicle was used to flee the scene of the felony;
- (d) the vehicle was necessary for the commission of the felony.

MCL 257.732(5)(a)–(d); MSA 9.2432(5)(a)–(d).

Under MCL 257.732(7); MSA 9.2432(7), the following felonies or attempts to commit these felonies are *excluded* from the definition of "felony in which a motor vehicle was used":

- F taking possession of and driving away a motor vehicle, MCL 750.413; MSA 28.645;
- F use of a motor vehicle without authority but without intent to steal, MCL 750.414; MSA 28.646;

Section 7.5

*See also MCL 257.602a; MSA 9.2302(1), which is the Motor Vehicle Code version of this same offense.

- F failure to obey a police or conservation officer's direction to stop, MCL 750.479a; MSA 28.747(1);*
- F felonious driving, MCL 752.191; MSA 28.661;
- F negligent homicide with a motor vehicle, MCL 750.324; MSA 28.556;
- F manslaughter with a motor vehicle, MCL 750.321; MSA 28.553;
- F murder with a motor vehicle, MCL 750.316; MSA 28.548 (first-degree murder), and MCL 750.317; MSA 28.549 (second-degree murder);
- F fraudulently altering or forging documents pertaining to motor vehicles, MCL 257.257; MSA 9.1957;
- F perjury or false certification to Secretary of State, MCL 257.903; MSA 9.2603;
- F reckless driving, MCL 257.626; MSA 9.2326; and
- F failing to stop and disclose identity at the scene of an accident resulting in death or serious injury, MCL 257.617 and 257.617a; MSA 9.2317 and 9.2317(1).

See MCL 257.732(4); MSA 9.2432(4), and MCL 257.319(1)(a)–(e); MSA 9.2019(1)(a)–(e), for the statutory sections that list these offenses.

NOTE: These offenses are excluded from the notice requirement of MCL 257.732(7); MSA 9.2432(7), because the penalties for all of these listed offenses already require mandatory license suspension upon conviction.

If the juvenile is a Michigan resident and fails to appear or otherwise respond to any matter pending relative to a violation of the Motor Vehicle Code, the court:

(1) must initiate the procedures required by MCL 257.321a(1); MSA 9.201(1), for failure to answer a citation, and

(2) may issue an order to apprehend the juvenile after a sworn petition is filed with the court.

MCR 5.931(D)(1)–(2).

7.5 Required Information About Other Court Matters Involving Members of Same Family

A petition must identify whether a Family Division matter involving members of the same family is or was pending, and contain the information required by MCR 3.206(A)(4). MCR 5.931(B)(8).

MCR 3.206(A)(4)(a)–(b) requires the petition to contain one of the two following statements:

(a) There is no other pending or resolved action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition.

(b) An action within the jurisdiction of the family division of the circuit court involving the family or family members of the person[s] who [is/are] the subject of the complaint or petition has been previously filed in [this court]/[____ Court], where it was given docket number ____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.

Whenever practicable, two or more matters within the Family Division's jurisdiction pending in the same judicial circuit and involving members of the same family must be assigned to the judge who was assigned the first matter. MCL 600.1023(1); MSA 27A.1023(1).

7.6 Required Notice to Courts With Prior Continuing Jurisdiction

Where the child is subject to a prior or continuing order of any other court of this state, notice must be filed in such other court of any order subsequently entered under the Juvenile Code. MCL 712A.3a; MSA 27.3178(598.3a).^{*} Notice must also be served, personally or by registered-mail service, on the parents, guardians, or person in loco parentis and to the prosecuting attorney of the county where the other court is located. Such notice shall not disclose any allegations or findings of fact set forth in petitions or orders, or the actual person or institution to whom custody is changed. *Id.*

MCR 5.927 provides that the manner of notice to the other court and the authority of the Family Division to proceed are governed by MCR 3.205.^{*}

^{*}See Form MC 28.

^{*}See Section 2.16 for a detailed discussion of MCR 3.205.

7.7 Preliminary Inquiries

MCR 5.903(A)(17) defines "preliminary inquiry" as an informal review by the court to determine appropriate action on a petition. A preliminary inquiry, rather than a preliminary hearing, may be held if the juvenile is not in custody and the petition does not request detention. MCR 5.932(A). Thus, no hearing is required, and the juvenile may not be present. The court need only examine the petition to determine the appropriate course of action.

Preliminary inquiries may be based on complaints^{*} signed and submitted by parents of a juvenile, school officials, or police officers, rather than on petitions signed and filed by the prosecuting attorney. This is permitted because the prosecutor's signature is only required when the petition requests that the court take jurisdiction pursuant to MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1) (criminal offenses).

^{*}See Form JC 01.

Thus, a complaint signed by a person other than the prosecutor may serve as the preliminary inquiry document for both status offender cases and wayward minor cases. MCL 712A.11(1)–(2); MSA 27.3178(598.11)(1)–(2), and MCR 5.932(A). Also, MCR 5.931(C) states that a citation or appearance ticket may serve as a petition for an offense other than a major offense (a felony), but MCL 712A.11(2); MSA 27.3178(598.11)(2), indicates that only a prosecuting attorney may file it.

NOTE: A wide variety of practices exist among courts as to the use of preliminary inquiries. Courts may not accept complaints from citizens or may utilize preliminary inquiries exclusively for less serious criminal offenses where no formal court jurisdiction will be requested or for cases in which the juvenile does not contest the charges.

A. Persons Who May Conduct Preliminary Inquiries

The court may assign a referee to conduct a preliminary inquiry. MCR 5.913(A)(1). MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), do not require referees who conduct preliminary inquiries to be licensed attorneys.

When a petition is not accompanied by a request for detention, the court at a preliminary inquiry may do any of the following:

(1) deny authorization of the petition;

*See Section 6.3.

(2) refer the matter to a public or private agency providing available services pursuant to the Juvenile Diversion Act;*

(3) direct that the juvenile and parent be notified to appear at a further informal inquiry of the petition;

*See Section 6.4.

(4) proceed on the consent calendar* as provided in MCR 5.932(B); or

*See Section 6.5.

(5) place the matter on the formal calendar as provided in MCR 5.932(C).*

MCR 5.932(A)(1)–(5).

B. Records of Preliminary Inquiries

*See Form JC 10.

Because a preliminary inquiry is not a hearing, no memorandum is required.* However, a record of the proceedings at a preliminary inquiry may be made and preserved by a written memorandum executed by the judge or referee setting forth the findings and procedures followed. MCR 5.925(B). There is no requirement that the judge or referee take testimony or examine evidence. The judge or referee is merely required to examine the petition and make his or her determination in accordance with MCR 5.932(A).

7.8 Preliminary Hearings

The court must hold a preliminary hearing if a juvenile is in custody and the petition requests detention. MCL 712A.14(2); MSA 27.3178(598.14)(2). If a juvenile is apprehended and not released, a preliminary hearing must occur within 24 hours, and this hearing may be held at the place of detention.* The preliminary hearing is considered the functional equivalent of the initial arraignment in adult criminal proceedings. *In re Wilson*, 113 Mich App 113, 121–22 (1982).

The court may assign a referee to conduct a preliminary hearing. MCR 5.913(A)(1). MCR 5.913(A)(2) and MCL 712A.10; MSA 27.3178(598.10), do not require that referees who conduct preliminary hearings be licensed attorneys.

*See Chapter 3 for a detailed discussion of the rules governing custody and detention of juveniles.

7.9 Right to Counsel at Preliminary Hearings

If the juvenile in a delinquency case is not represented by an attorney, the court must advise the juvenile of the right to the assistance of counsel at each stage of the proceedings. MCL 712A.17c(1); MSA 27.3178(598.17c)(1), and MCR 5.915(A)(1).

The apparent discrepancy between MCL 712A.17c(1); MSA 27.3178(598.17c)(1), which requires the court to advise the juvenile of his or her right to an attorney “at each stage of the proceedings,” and MCR 5.915(A)(1), which states that this advice is required “at each stage of the proceedings *on the formal calendar*,” is explained by reference to the court rule governing preliminary hearings. MCR 5.935(B)(4) states that “if the hearing is to continue,” i.e., if a judge or referee at the preliminary hearing is considering placing the case on the formal calendar, then the juvenile must be advised of the right to an attorney.*

*See Section 7.14(C), below (decision to continue with preliminary hearing).

The appearance of defense counsel is governed by MCR 2.117(B). MCR 5.915(C).*

*See Form JC 07.

A. Appointment of Counsel

MCL 712A.17c(2)(a)–(e); MSA 27.3178(598.17c)(2)(a)–(e), and MCR 5.915(A)(2)(a)–(e) require the court to appoint an attorney* to represent the juvenile if any of the following applies:

*See Form JC 03.

- (a) the parent refuses or fails to appear and participate in the proceedings;
- (b) the parent is the complainant or victim;
- (c) the juvenile and those responsible for the support of the juvenile are found financially unable to retain an attorney and the juvenile does not waive the right to an attorney;

(d) those responsible for the support of the juvenile refuse or neglect to retain an attorney and the juvenile does not waive the right to an attorney; or

(e) the court determines that the best interests of the juvenile or the public require appointment.

An attorney appointed by the court must serve until discharged by the court. MCL 712A.17c(9); MSA 27.3178(598.17c)(9), and MCR 5.915(E).

* See Chapters 12–15

NOTE: In some cases, the court will continue the attorney’s appointment past disposition — usually because the needs of the juvenile demand that an attorney familiar with the case follow the juvenile’s progress while he or she remains under the court’s jurisdiction.*

B. Appointment of Defense Counsel in Status Offense Cases

*See Section 2.3 for a list of status offenses.

MCL 712A.17c(2)(b); MSA 27.3178(598.17c)(2)(b), and MCR 5.915(A)(2)(b) require the court to appoint defense counsel in all cases in which the parent is the complainant or victim. Thus, defense counsel must be appointed in all status offense cases.*

C. Waiver of Right to Counsel

*See Form JC 06.

The juvenile may waive the right to the assistance of counsel except where a parent or guardian ad litem objects or where the court determines that the best interests of the juvenile or the public require appointment of counsel. The waiver must be made in open court to a judge or referee, who must find and place on the record that the waiver was voluntarily and understandingly made. MCL 712A.17c(3); MSA 27.3178(598.17c)(3), and MCR 5.915(A)(3).* See, generally, *In re Gault*, 387 US 1, 42; 87 S Ct 1428; 18 L Ed 2d 527 (1967).

D. Costs

*See Sections 12.14–12.18 for a detailed discussion of reimbursement of costs.

MCL 712A.17c(8); MSA 27.3178(598.17c)(8), and MCR 5.915(D) state that if an attorney is appointed for a party in delinquency proceedings, the court may enter an order assessing attorney costs against the party or a person responsible for the support of that party. See also MCL 712A.18(5); MSA 27.3178(598.18)(5) (reimbursement as part of order of disposition).*

*See Forms MC 230 and JC 38 and 39.

An order assessing attorney costs may be enforced through contempt proceedings.*

E. Appointment of Guardians Ad Litem

The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it. MCR 5.916(A). For rules governing the appearance and rights of guardians ad litem, and the responsibility for the costs of guardian ad litem, see MCR 5.916(B)–(D).

NOTE: The relative importance of the guardian ad litem has declined as a result of the requirement that most juveniles must be represented by attorneys. Traditionally, a guardian ad litem's responsibility is to protect the best interests of the juvenile. Because in most instances the juvenile's attorney will fulfill this traditional function, a guardian ad litem should be appointed only if it appears to the court that the juvenile's attorney may not be able to do so (for example, if the juvenile has severe mental health problems). A guardian ad litem may also be appointed whenever a juvenile appears without a parent. Martin, Dean & Webster, *Michigan Court Rules Practice* (3d ed), §5.993, p 807.

7.10 Appearance of Prosecuting Attorney at Preliminary Hearings

Under MCL 712A.11(2); MSA 27.3178(598.11)(2), and MCR 5.914(B)(1), only the prosecuting attorney may file a petition requesting the court to take jurisdiction of a juvenile allegedly within MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1) (criminal offenses). MCR 5.914(A) and 5.914(B)(2), and MCL 712A.17(4); MSA 27.3178(598.17)(4), provide that when a criminal offense is alleged, the prosecuting attorney must appear for the people if the proceeding requires a hearing and the taking of testimony. If the court requests, the prosecutor shall review petitions in non-criminal offenses for legal sufficiency, MCR 5.914(A), and appear for the people at a hearing.

NOTE: The prosecutor may amend the petition by right to designate the case or to ask the court to designate the case during the preliminary hearing. See Section 16.19.

The prosecuting attorney may be a county prosecuting attorney, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or, if an ordinance violation is alleged, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based. MCR 5.903(B)(5).

7.11 Time Requirements for Preliminary Hearings

*See Chapter 3 for a detailed discussion of the rules governing custody and detention of juveniles.

MCR 5.935(A)(1) states that the preliminary hearing must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, or the juvenile must be released.*

MCR 5.935(A)(2)(a)–(b) allows the court to adjourn the hearing for up to 14 days:

- (a) to secure the attendance of the juvenile’s parents or of witnesses, or
- (b) for other good cause shown.

7.12 Special Adjournments of Preliminary Hearings for Cases Involving “Life Offenses”

*See Form MC 309.

The Family Division may grant special adjournments* when the juvenile is between the ages of 14 and 17 years of age and is alleged to have committed a specified juvenile violation. See MCR 5.935(A)(3).

NOTE 1: MCR 5.935(A)(3), which was adopted in 1988, has not been amended to reflect the legislative changes made to the “automatic” waiver statutes. In 1996, the Legislature increased the number of offenses eligible for “automatic” waiver from “life offenses” to “specified juvenile violations,” and lowered the age of eligibility from 15 years to 14 years. See 1996 PA 255 and 260, effective January 1, 1997, amending MCL 600.606(2); MSA 27A.606(2), and MCL 764.1f(2); MSA 28.860(6)(2). Therefore, the “special adjournments” referred to in MCR 5.935(A)(3) should be made available to the prosecuting attorney whenever a juvenile over 14 years of age is charged with a specified juvenile violation.

*See Section 7.15, below.

The court, upon the request of the prosecuting attorney, shall adjourn the preliminary hearing for up to five days to give the prosecuting attorney an opportunity to determine whether to authorize the filing of a warrant and complaint in district court. MCR 5.935(A)(3)(a). MCR 5.935(A)(3)(b)–(c) add that during the special adjournment, the court must defer a decision as to whether to authorize the filing of a petition and must release the juvenile pursuant to MCR 5.935(C) or detain the juvenile pursuant to MCR 5.935(D).*

*See Chapters 16–21 (designated proceedings) and Chapter 24 (“traditional” waiver).

If, at the resumption of the preliminary hearing, the prosecutor has not authorized the filing of a warrant and complaint, the Family Division must proceed with the hearing, but this rule does not preclude the prosecutor from seeking a “traditional” waiver of the court’s jurisdiction under MCR 5.950 (if the petition is authorized), or from designating the case under MCR 5.951(A)(3)(a).*

NOTE 2: The prosecutor may amend the petition by right to designate the case or to ask the court to designate the case during the preliminary hearing. See Section 16.19.

NOTE 3: If the prosecuting attorney files a complaint and warrant in district court, an arraignment must be held, and following the arraignment, the district court must set a date for the juvenile's preliminary examination within the next 14 days. The period consumed by the special adjournment, *up to three days*, must be deducted from the 14 days allowed for conduct of the preliminary examination following arraignment. MCR 6.907(C).*

*See Section 22.8(A) for a more detailed discussion of the time requirements for preliminary examinations in "automatic" waiver cases.

7.13 Notice Requirements for Preliminary Hearings

Notice of the preliminary hearing must be given to the juvenile and his or her parent as soon as the hearing is scheduled, and the notice may be in person, in writing, on the record, or by telephone. MCR 5.920(C)(2)(a).*

*See Section 8.6 (waiver of notice of hearing).

7.14 Procedures at Preliminary Hearings

MCR 5.935(B)(1)–(7) outline the procedures to be followed at a preliminary hearing.

A. Notification of Parent

The court must determine whether the parent has been notified and is present. The preliminary hearing may be conducted without a parent being present if an attorney or guardian ad litem appears with the juvenile. MCR 5.935(B)(1).

B. Reading of Allegations

The court must read the allegations in the petition. MCR 5.935(B)(2). Although the rule does not authorize waiver of the reading of the allegations as often occurs in criminal proceedings, the reading is usually waived by counsel for the juvenile.

C. Decision to Continue with Hearing

Before taking testimony, the court must determine whether the petition should be dismissed, whether the matter should be referred to alternative services pursuant to the Juvenile Diversion Act, whether the matter should be heard on the consent calendar, or whether the court should continue the preliminary hearing. MCR 5.935(B)(3).

If the hearing is to continue, the court must advise the juvenile, in plain language and on the record, of:

(a) the right to an attorney pursuant to MCR 5.915(A)(2);

(b) the right to trial by judge or by jury on the allegations in the petition, and that a referee may be assigned to hear the case unless a demand for a judge or jury is made pursuant to MCR 5.911 or 5.912; and

(c) the privilege against self-incrimination, and that any statement by the juvenile may be used against him or her.

MCR 5.935(B)(4)(a)–(c).

D. Opportunity to Plead

The juvenile must be allowed an opportunity to deny or otherwise plead to the allegations. MCR 5.935(B)(6).*

E. Authorization of Filing of Petition

Unless the preliminary hearing is adjourned, the court must decide whether to authorize the filing of the petition. MCR 5.935(B)(7). When a judge or referee gives written permission to file a petition containing allegations against the juvenile, the petition is “authorized to be filed.” MCR 5.903(A)(15).

If it authorizes the filing of the petition, the court must either release the juvenile pursuant to MCR 5.935(C) or detain the juvenile pursuant to MCR 5.935(D). MCR 5.935(B)(7)(a)–(b).

F. Fingerprinting of Juvenile*

The court has discretion to permit fingerprinting and photographing of any minor who is in court custody. MCR 5.923(C).*

MCR 5.935(B)(7)(c) and 5.936(B) state that at the time the court authorizes the filing of a petition alleging a reportable juvenile offense,* as defined by MCR 5.903(B)(6), the court must examine the confidential files and verify that the juvenile has been fingerprinted.

If the juvenile has not been fingerprinted, the judge or referee must order the juvenile to submit to the appropriate agency for fingerprinting. MCR 5.935(B)(7)(c) and 5.936(B).*

*See Chapter 10 (pleas of admission and nolo contendere).

*See also Section 9.15 (pretrial identification procedures).

*See Form JC 16.

*See Section 4.10(A) for a list of reportable juvenile offenses.

*See Section 12.25 (court must verify that juvenile has been fingerprinted prior to disposition for reportable offense).

7.15 Detention Considerations at Preliminary Hearings

MCR 5.935(C) states that the court may release a juvenile to a parent pending the resumption of a preliminary hearing, pending trial, or until further order without conditions, or may release a juvenile on the basis of any lawful conditions, including the requirement that bail be posted.

A. Requirements for Ordering Pretrial Detention

Detention may be ordered until the resumption of the preliminary hearing, until further order of the court, or pending trial.* A juvenile shall not be removed from his or her parent pending trial unless there is probable cause to believe that the juvenile committed an offense, MCR 5.935(D)(1), and one or more of the following circumstances are present:

- (a) the offense alleged to have been committed by the juvenile is so serious that release would endanger the public safety;
- (b) the juvenile charged with a major offense (a felony) will likely commit another offense pending trial if released, and
 - (i) another petition is pending against the juvenile, or
 - (ii) the juvenile is on probation, or
 - (iii) the juvenile has a prior adjudication but is not under the court's jurisdiction at the time of apprehension;
- (c) there is a substantial likelihood that if the juvenile is released to the parent, with or without conditions, the juvenile will fail to appear at the next court proceeding;
- (d) pretrial detention is otherwise specifically authorized by law.

MCR 5.935(D)(2)(a)–(d).

MCL 712A.15(2)(a)–(e); MSA 27.3178(598.15)(2)(a)–(e), provide some other circumstances that allow for pretrial detention. The statute states that detention pending a preliminary hearing is limited to the following juveniles:

- (a) those whose home conditions make immediate removal necessary;
- (b) those who have a record of unexcused failures to appear at juvenile court proceedings;
- (c) those who have run away from home;*
- (d) those who have failed to remain in a detention or a nonsecure facility or placement in violation of a court order; and

*See Form JC 10.

*But see Section 3.9 for limitations on detention of status offenders.

(e) those whose offenses are so serious that release would endanger public safety. See *Schall v Martin*, 467 US 253, 265; 104 S Ct 2403; 81 L Ed 2d 207 (1984).

Note that MCR 5.935(D)(2)(a) is identical to MCL 712A.15(2)(e); MSA 27.3178(598.15)(2)(e).

*See Section 7.19 for the applicability of the JCVRA.

NOTE: See also MCL 780.785(2); MSA 28.1287(785)(2), of the Juvenile Crime Victim's Rights Act,* which states that based upon any credible evidence of acts or threats of physical violence or intimidation by the juvenile or at the juvenile's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the juvenile be detained in a juvenile facility.

B. Factors to Consider When Deciding Upon Conditions for Pretrial Release

If the juvenile is not detained pursuant to MCR 5.935(D), the juvenile should be released to his or her parent pursuant to MCR 5.935(C). Pretrial release may be without conditions, or may be based on any lawful conditions, including the requirement that bail be posted.

The factors to consider when deciding whether to release the juvenile, with or without conditions, are listed below. The court must consider available information on:

- (a) family ties and relationships;
- (b) the juvenile's prior delinquency record;
- (c) the juvenile's record of appearance or nonappearance at court proceedings;
- (d) the violent nature of the alleged offense;
- (e) the juvenile's prior history of committing acts that resulted in bodily injury to others;
- (f) the juvenile's character and mental condition;
- (g) the court's ability to supervise the juvenile if placed with a parent or relative; and
- (h) any other factor indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.

MCR 5.935(C)(1)(a)–(h).

C. Evidence and Witnesses Needed to Establish Probable Cause at Preliminary Hearings

A finding of probable cause to believe that the juvenile committed an offense may be based on hearsay evidence that possesses adequate guarantees of trustworthiness. In addition, the court shall permit the use of subpoena power to secure attendance of defense witnesses.* MCR 5.935(D)(4).

*See Form
MC 11.

The juvenile may contest the sufficiency of evidence to support detention by cross-examining witnesses, presenting defense witnesses, or presenting other evidence. MCR 5.935(D)(4).

D. Waiver of Probable Cause Phase of Detention Determination

A juvenile in custody may waive the probable cause phase of a detention determination only if the juvenile is represented by an attorney. MCR 5.935(D)(3).

E. Bond Pending Trial

MCR 5.935(C)(2) states that in addition to any other conditions of release, the court may require a parent to post a surety bond or cash in the full amount of the bail, at the parent's option, to ensure that the juvenile will appear for trial.* Except as otherwise provided by MCR 5.935(C), MCR 3.604 applies to bonds posted under this rule.

*See Form JC 08.

Unless the court requires a surety or cash bond as provided in MCR 5.935(C)(2), the court must advise the parent of the option to satisfy the monetary requirement of bail by:

(a) posting cash in the full amount of bail set by the court or a surety bond written by a person or company licensed to write surety bonds, or

(b) depositing with the register, clerk, or cashier of the court currency equal to 10 percent of the bail, but at least \$10.00.

MCR 5.935(C)(3)(a)–(b).

The court may modify or revoke the bail for good cause after providing the parties notice and an opportunity to be heard. MCR 5.935(C)(5).*

*See Section
12.17 (use of bail
money to pay
reimbursement
orders).

7.16 Required Findings at the Conclusion of Preliminary Hearings

*See Section 13.4 (required review of referee's detention decision).

MCR 5.935(C)(4) and MCR 5.935(D)(4) require the court to make findings regarding whether probable cause exists to believe that the juvenile committed an offense and state the reasons for its decision to grant or deny release on the record or in a written memorandum.*

*See Forms JC 09 and 10.

The court's statement need not include a finding on each of the factors enumerated in MCR 5.935. MCR 5.935(C)(4).*

7.17 Places of Detention

*See Section 3.13 (table summarizing places of detention).

MCR 5.935(D)(5) states that a detained juvenile must be placed in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the requirements of MCL 712A.15; MSA 27.3178(598.15), and MCL 712A.16; MSA 27.3178(598.16).*

7.18 Special Requirements in Status Offense and Wayward Minor Cases Involving Native American Juveniles

MCR 5.935(B)(5) states that if the juvenile is charged as a status offender or a wayward minor, and the juvenile or the juvenile's parent is a registered member of an American Indian tribe or band, or is eligible for membership, the court must follow the procedures set forth in MCR 5.980. See, generally, 25 USC 1901 et seq.

MCR 5.980(A)(1)–(3) provide:

(1) If the Indian child resides on a reservation or is under tribal court jurisdiction at the time of referral, the matter *shall* be transferred to the tribal court having jurisdiction. See 25 USC 1911(a). "Indian child" is defined in 25 USC 1903(4) as any unmarried person who is under age 18 and is either a member of an Indian tribe or eligible for membership and is the biological child of a member of an Indian tribe.

(2) If the child does not reside on a reservation, the court shall ensure that the petitioner has given notice* of the proceedings to the child's tribe and the child's parents or Indian custodian and, if the tribe is unknown, to the Secretary of the Interior. See 25 USC 1912(a).

(3) If the tribe exercises its right to appear in the proceeding and requests that the proceeding be transferred to tribal court, the court shall transfer the case to the tribal court unless either parent objects to the transfer of the case to tribal court jurisdiction or the court finds good cause not to transfer. See 25 USC 1911(b) and (c). The perceived adequacy of the tribal court or tribal services shall not be good cause to refuse to transfer the case.

*See Form JC 48.

MCR 5.980(B), dealing with emergency removal, states that an Indian child who resides or is domiciled on a reservation shall not be removed from a parent or Indian custodian unless the removal is to prevent immediate physical harm to the child. An Indian child not residing or domiciled on a reservation may be temporarily removed if the child's health, safety, or welfare is endangered. See 25 USC 1922.*

*See Section 12.24 for a discussion of placement of Native American juveniles.

7.19 Special Requirements Created by the Juvenile Crime Victim's Rights Act

The Juvenile Crime Victim's Rights Act generally places responsibility on the investigating agency and prosecuting attorney for providing certain notices to the victim and for certain other duties. Some responsibilities, however, remain with courts, including:

- F ensuring victims have an opportunity to be heard before the court diverts a case;*
- F notifying a victim of the right to make a statement at disposition and identifying the writer of the disposition report;*
- F ensuring victims have an opportunity to make a victim impact statement;*
- F notifying parents of their responsibility for victim restitution;*
- F reporting a juvenile's noncompliance with a restitution order to the prosecutor;*
- F providing the victim with a certified copy of the order of adjudication; and*
- F notifying the victim when the juvenile is dismissed from court jurisdiction.*

*See Section 6.3(E).

*See Section 12.7.

*See Section 12.7.

*See Section 12.12(M).

*See Section 12.12(L).

*See Section 11.15(D).

*See Section 15.9(A).

In addition, under MCL 780.798a; MSA 28.1287(798a), the court may perform the notification functions delegated to the prosecuting attorney if:

- F the prosecuting attorney allows the court to do so pursuant to a written agreement, and
- F the court performed those functions before May 1, 1994.

When the Family Division may perform a function pursuant to MCL 780.798a; MSA 28.1287(798a), it is noted in the following sections.

The Juvenile Crime Victim's Rights Act, MCL 780.781–780.802; MSA 28.1287(781)–28.1287(802), applies to juveniles alleged or found to be within the Family Division's jurisdiction over felonies, MCL 780.781(1)(d)(i); MSA 28.1287(781)(1)(d)(i), and other enumerated offenses, MCL 780.781(1)(d)(ii)–(vii); MSA 28.1287(781)(1)(d)(ii)–(vii). MCL 780.781(1)(b); MSA 28.1287(781)(1)(b). "Victim" is defined as a person who suffers direct or threatened physical, financial, or emotional harm as a result of the

commission of an offense, or, if the victim is deceased, one of several other persons listed in the statute. MCL 780.781(1)(g)(i)–(iv); MSA 28.1287(781)(1)(g)(i)–(iv).

If a victim who suffers direct or threatened physical, financial, or emotional harm is physically or emotionally unable to exercise the privileges and rights under the act, the victim may designate a spouse, a child over 18 years of age, or a parent, sibling, or grandparent to act for the victim during the disability. The victim must provide the prosecuting attorney with the name of the person to act in the victim’s stead, but notices required under the act must still only be sent to the victim. MCL 780.781(2); MSA 28.1287(781)(2).

A. Special Requirements for Petitions

The complaint or petition filed by the investigating agency must contain a listing of the names, addresses, and phone numbers of any known victims of a juvenile offense. This listing is not a matter of public record. MCL 780.784; MSA 28.1287(784). See also MCR 5.903(A)(18) (the definition of “confidential files” includes this separate statement of victims).

MCL 780.783a; MSA 28.1287(783a), requires the investigating agency or prosecuting attorney that files a complaint or submits a petition seeking to invoke the court’s jurisdiction for one of the following offenses to place a statement on the complaint or petition that the offense resulted in damage to a victim’s property, physical injury of the victim, or death. The offenses are:

- F leaving the scene of a personal-injury accident, MCL 257.617a; MSA 9.2317(1);
- F operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual’s property or physical injury or death to another individual, MCL 257.625; MSA 9.2325;
- F selling or furnishing alcoholic liquor to an individual less than 21 years of age, if the violation results in physical injury or death to any individual, MCL 436.33; MSA 18.1004;
- F operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual’s property or physical injury or death to another individual, MCL 324.80176; MSA 13A.80176; and
- F a violation of a local ordinance substantially corresponding to a violation listed above.

B. Special Notice Requirements

Within 72 hours after the prosecuting attorney files or submits a petition seeking to invoke the court's jurisdiction for a juvenile offense, the prosecuting attorney or the court (pursuant to agreement) must give to each victim a written notice in plain English of each of the following:

- (a) a brief statement of the procedural steps in the processing of a juvenile offense case, including the fact that a juvenile may be waived to the court of general criminal jurisdiction;
- (b) a specific list of the rights and procedures under the JCRVA;
- (c) details and eligibility requirements for compensation pursuant to MCL 18.351 et seq.; MSA 3.372(1) et seq.;
- (d) suggested procedures if the victim is subjected to threats or intimidation; and
- (e) the person to contact for further information.

MCL 780.786(1)(a)–(e); MSA 28.1287(786)(1)(a)–(e).

If requested by the victim, the prosecuting attorney or the court (pursuant to agreement) shall give to the victim notice of any scheduled court proceedings and notice of any changes in that schedule. MCL 780.786(2); MSA 28.1287(786)(2).

If the juvenile has been placed in a juvenile facility, not later than 48 hours after the preliminary hearing of that juvenile for a juvenile offense, the prosecuting attorney or the court (pursuant to agreement) must give to the victim the telephone number of the juvenile facility and notice that the victim may contact the juvenile facility to determine whether the juvenile has been released from custody. MCL 780.785(1); MSA 28.1287(785)(1). "Juvenile facility" includes a county facility, a facility operated as an agency of the court, or a state facility. MCL 780.781(1)(c); MSA 28.1287(781)(1)(c).

7.20 Records of Proceedings at Preliminary Hearings

MCR 5.925(B) provides that a record of proceedings at a preliminary hearing may be made and preserved by a written memorandum executed by the judge or referee setting forth findings and procedures followed.*

*See Form
JC 09.

NOTE: Although a stenographic or mechanical recording of proceedings is required only after a case has been placed on the formal calendar, most courts do make recordings of their preliminary hearings.

